IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 69 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH H. RAJPUT

Versus

JAYANTILAL BHIKHABHAI SHAH

Appearance:

MR PRANAV G DESAI for Petitioner

MR KR RAVAL for Respondent No. 1

MR DF AMIN for Respondent No. 3

Mr K C Shah, APP for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/03/2001

ORAL JUDGEMENT

The appellant-original complainant, Food Inspector, of Vadodara Municipal Corporation has preferred this appeal under section 378 of the Criminal Procedure Code, 1973 challenging the judgment and acquittal order of the respondents above named from the

offences punishable under the different provisions of Prevention of Food Adulteration Act, 1954 by judgment and order dated 7.3.1990 recorded by the learned Judicial Magistrate First Class (Municipality), Vadodara in criminal case no.157/87 filed by the present appellant-original complainant Food Inspector before the said Court. The facts giving rise to the present appeal may be briefly stated as follows:

2. That on 16.12.1986 at 10.30 a.m., the present appellant-original complainant Food Inspector of Municipal Corporation was on his official visit to different places in Vadodara City. He visited the premises of the present respondent. The first respondent was present there and he was dealing with sale of different articles. The appellant-original complainant went to the shop of the respondents and introduced himself as the Food Inspector. He also brought two panch witnesses to witness the process to be undertaken by him. He enquired about the licence from the first respondent and recorded note thereof.

3. Thereafter according to the case of the appellant-original complainant, he demanded asefoetida in a quantity of 600 grams from the first respondent. The said sample was purchased by the original complainant and thereafter, price of the sample coming to Rs. 168/- was paid and receipt was obtained. The said sample was divided into three parts and each one was packed in different packing in accordance with the rules provided for the same. One of the samples was sent to the Public Analyst for analysis. Report was obtained and it was found that the sample was not upto the standard and it was adulterated. Thereafter the original complainant obtained sanction to file complaint against the respondents. After obtaining sanction, the complaint was filed.

4. On receipt of the complaint, the learned Magistrate issued summons to the respondents. The respondents appeared before the court. They were supplied with copies of complaint. The learned Magistrate recorded evidence produced by the appellants-original complainant and after recording the evidence framed charge at Exh.52. The respondents pleaded not guilty to the said charge and claimed to be tried. The remaining evidence was recorded after affording opportunity to the respondents to further cross examine the complainant's witness. After the conclusion

of the evidence, the learned Magistrate recorded further statement of the respondents under section 313 of the Code and allowed opportunity to the respondents to explain the circumstances appearing against them in the evidence. Thereafter, the respondents were given opportunity to produce defence witness. The respondents have not produced any evidence in their defence and after hearing the arguments, the learned Magistrate found that the original complainant had failed to prove his case and therefore, the respondents came to be acquitted by judgment and order dated 7.3.1990.

5. Feeling aggrieved by the said judgment and acquittal order of the respondents, the appellant has preferred this appeal before this court. It has been mainly contended here that there was sufficient evidence before the trial court for holding the respondents guilty. That the learned Magistrate has committed serious error in acquitting them. It is the case of the appellant that the report of the Public Analyst clearly establishes that the sample taken by the original complainant was adulterated and sub-standard. That in that in view of the matter, the judgment and order of the learned Magistrate are illegal and erroneous and deserve to be set aside.

6. It is, therefore prayed that the present appeal be allowed, the judgment and acquittal order of the learned Magistrate be set aside and the respondents above named be convicted to for the aforesaid offences in accordance with law. On receipt of the appeal, the same was admitted. Notice was issued to the respondents. None appears on behalf of respondent no.2.

7. I have heard Mr P G Desai, learned Advocate appearing on behalf of the appellant. I have also heard Mr Kirit Raval, learned Advocate for respondent no.1, and Mr K C Shah, learned Addl.Public Prosecutor for Respondent no.4.

8. It is an admitted position that the case of the appellant substantially rests on appreciation of the report of the Public Analyst. The said report has been placed on record of the trial court at Exh.39. The said report shows that along with other things, colophony resin was present in the said sample. But according to the standard laid down by the rules, colophony resin should have been absent. Therefore, the sample was treated to be one not acccording to the standard and, therefore, it was alleged that the sample was

adulterated.

9. It is a matter of record that the second part of the sample was forwarded to the Central Food Laboratory and the report of the said Laboratory has been placed at Exh.13 before the trial court and the report shows that Colophony resin was absent when the sample was analysed by them in the said Laboratory. It seems that the basis for filing the complaint against the respondent will disappear as soon as it has been submitted that the Central Food Laboratory reported that colophony resin was absent in the sample. The said report at Exh.13 does not go to say that the sample does not conform to the required quality laid down in the provisions of P.F.A. Rules.

10. In the above view of the matter, it is very clear that according to the case of the original! complainant, the food sample was adulterated on the ground that colophony Resin was present and that was based on the analysis report of the Public Analyst, Vadodara. On the other hand, the report of the Central Food Laboratory clearly shows that colophony Resin was not present in the said sample.

11. It is very clear that when there are two reports on record, one of the Public Analyst and another of the Central Food Laboratory, then the report of the Central Food Laboratory would necessarily supersede the report of the Public Analyst. It would be relevant to refer to the provisions contained in section 13 of the said Act. Sub-section (ii) of Section 13 makes it clear that the report of the Central Food Laboratory would supersede the report of the Public Analyst. When this provision is made under the Act itself, it is not necessary for this court to go into details. Learned Advocate for the respondent has relied upon a decision in the case of Tulsiram v. The State of Madhya Pradesh, reported in 1984 (II) Prevention of Food Adulteration Cases, 146. There it has been observed as follows:

> "If the report of the Central Food Laboratory is to the effect that the article of food is not adulterated the very basis of the prosecution will disappear. In such an event, the further pursuit of the prosecution will be needless and the accused will have to be discharged or acquitted as the case may be."

12. The aforesaid observations of the Supreme Court reiterates whatever has been stated in Section 13 (ii) of the said Act. This would clearly mean that report of the Central Food Laboratory supersedes the report of the Public Analyst.

13. In the present case, the entire complaint is based on the fact that there was colophony Resin present in the said sample. The Central Food Laboratory report at exh.13 produced before the trial court clearly shows that the said ingredient was not present in the sample in question. Therefore, report of the Public Analyst would be superseded by Exh.13, the report of the Central Food Laboratory and once it is found that the Colophony Resin was not present, there is no other ground for alleging that food sample was adulterated and for prosecuting the respondents for the offence in question. In above view of the matter, there is no reason to interfere with the acquittal order recorded by the learned Magistrate. Here the Court is sitting in appeal against the order of acquittal and even if a different view is possible, it would not be just and proper to interfere with the order of acquittal. Learned Advocate for the appellant has tried to argue that there are certain other points which can be raised in support of the appeal. However, when the report of the Public Analyst stands superseded by the report of the Central Food Laboratory, it would not be necessary for this court to examine the other aspects of the case.

14. This clearly means that there is no substance or fact in this appeal. The appellant has not been able to show that the judgment and acquittal order recorded by the learned Magistrate are illegal and erroneous. In the facts and circumstances, there is absolutely no reason for this Court to interfere with the same. This appeal, therefore, deserves to be dismissed.

15. In the result, this appeal is ordered to be dismissed and the judgment and acquittal order recorded by the trial court are hereby confirmed.

22.3.2001 [D P Buch, J.]
msp